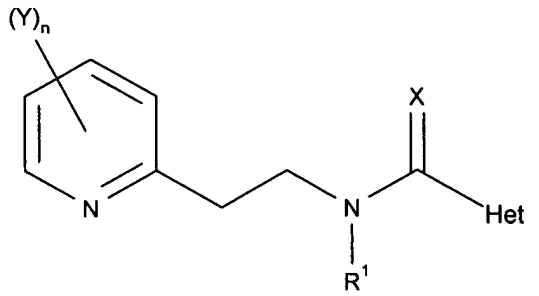
REMARKS/ARGUMENT

Claims 1-13 and 16-19 are pending in the application with claims with claims 14 and 15 having been canceled, 17 having been withdrawn, and claims 1-13, 16, 17, and 19 having been amended.

Claims 1-14, 16, 18, and 19 have been rejected under 35 U.S.C. 103(a) as being unpatentable over Mansfield et al. (WO 2004/074280) in view of Cooke et al. (WO 01/11965).

Mansfield et al. disclose a compound of general formula (I):



(I)

in which:

X is an oxygen atom or a sulphur atom;

Y is the same or different and is selected from the group consisting of a halogen atom, a nitro group, a cyano group, a hydroxy, a carboxyl group, a C_1-C_8-alkyl, a C_1-C_6-halogenoalkyl having 1 to 5 halogen atoms, a C_1-C_8-alkylamino, a di-C_1-C_8-alkylamino, a C_1-C_8-alkoxy, a C_1-C_6-halogenoalkoxy having 1 to 5 halogen atoms, a C_1-C_8-alkylthio, a C_1-C_6-halogenoalkylthio having 1 to 5 halogen atoms, a C_2-C_8-alkenyloxy, a C_2-C_8-halogenoalkenyloxy having 1 to 5 halogen atoms, a C_3-C_8-alkinyloxy, a C_3-C_8-halogenoalkinyloxy having 1 to 5 halogen atoms, a C_3-C_8-cycloalkyl, a C_1-C_8-alkoxycarbonyl, a C_1-C_8-alkylsulphinyl, a C_1-C_8-alkylsulphonyl, a C_1-

C_8-halo-genoalkylsulphinyl having 1 to 5 halogen atoms, a C_1-C_8-halogenoalkylsulphonyl having 1 to 5 halogen atoms or a C_1-C_6-alkoximino-C_1-C_6-alkyl;

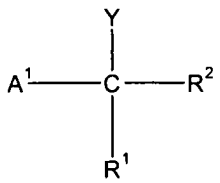
R^1 is selected from the group consisting of a hydrogen atom, a cyano group, a nitro group, a formyl group, a C_1-C_6-alkyl, a C_1-C_6-alkylcarbamoyl, a C_2-C_6-alkenyl, a C_2-C_6-alkynyl, a C_1-C_6-halogenoalkyl having 1 to 7 halogen atoms, a C_1-C_6-alkoxy-C_1-C_6-alkyl, a C_1-C_6-cyanalkyl, a C_1-C_6-aminoalkyl, a C_3-C_6-cycloalkyl, a C_1-C_6-alkylcarbonyl, a C_1-C_6-halogenalkylcarbonyl having 1 to 5 halogen atoms, a C_1-C_6-alkoxy-C_1-C_6-alkylcarbonyl, a C_1-C_6-alkylsulfanyl or a C_1-C_6-halogenalkylsulfanyl having 1 to 5 halogen atoms;

n is 1, 2, 3 or 4; and

Het represents an optionally substituted 5-, 6- or 7-membered non-fused heterocycle with one, two or three heteroatoms independently selected from the group consisting of substituted or unsubstituted nitrogen, unsubstituted sulphur, and oxygen; Het being linked by a carbon atom.

The Examiner has acknowledged that the compounds of Mansfield et al. differ from those of the present invention in that, in Mansfield et al., R^1-R^4 are all hydrogen, whereas, in the compounds of the present invention, at least one of R^1-R^4 is not hydrogen. In view of this, the Examiner has cited Cooke et al. to show the "optional interchangeability of hydrogen, alkyl, halogen, cyano, hydroxyl, amino, etc."

Cooke et al. claim A compound or a complex or salt thereof of the general formula I:



(I)

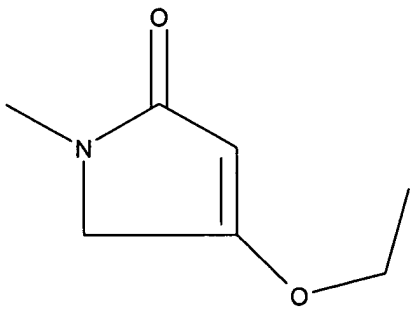
wherein:

A^1 is 2-pyridyl substituted with from one to four moieties independently selected from the group consisting of halogen and trifluoromethyl, provided that at least one moiety is trifluoromethyl;

Y is a moiety selected from the group consisting of $-L-A^2$ and $-L^1-A^3$

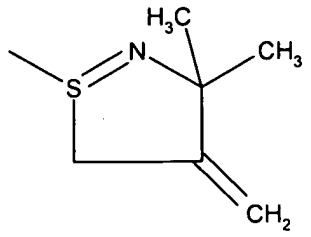
wherein:

A^2 is selected from the group consisting of unsubstituted or substituted phenyl, cyclohexyl, cyclopropyl, thienyl, imidazolyl, tolyl, and



wherein any substituents on A^2 are independently selected from the group consisting of alkyl, halogen, and haloalkyl;

A^3 is selected from the group consisting of unsubstituted or substituted phenyl, pyridyl, thiodiazolyl, triazolyl, fluorenyl, tolyl, tetrazolyl, pyrimidinyl, imidazolyl, benzthiazolyl, quinolinyl, and



wherein any substituents on A^3 are selected from the group consisting of alkyl, halogen, haloalkyl, hydroxyl, and phenyl;

L is a 3-atom linker selected from the group consisting of $-N(R^5)C(=X)N(R^6)-$, $-N(R^5)C(=X)CH(R^3)-$, $-CH(R^3)N(R^5)CH(R^4)-$, $-CH(R^3)N(R^5)C(=X)-$, $-ON(R^5)C(=X)-$; wherein the left hand side of L is attached to the central carbon atom of formula I;

L^1 is a 4-atom linker selected from the group consisting of $-N(R^9)C(=X)X^1CH(R^7)-$, $-N(R^9)C(=X)CH(R^7)CH(R^8)-$; $-N(R^9)C(R^7)=C(R^8)C(=X)-$, $-N(R^9)C(=X)C(R^7)(R^8)SO_2-$, and $-N(R^9)C(=X)C(R^7)(R^8)X^1$; wherein the left hand side of L^1 is attached to the central carbon atom of formula I;

R^1, R^2, R^3, and R^4 are independently selected from the group consisting of hydrogen or alkyl;

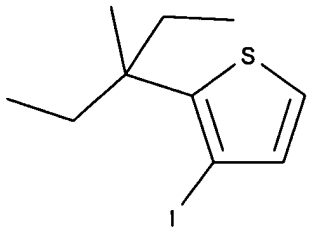
R^5, R^6, R^7, and R^8 are independently selected from the group consisting of hydrogen, alkyl, and acyl;

X is selected from the group consisting of oxygen and sulfur;

X^1 is selected from the group consisting of oxygen and $-N(R^9)-$; and

R^9 is selected from the group consisting of hydrogen and alkyl.

A perusal of the cited references has failed to reveal any compounds disclosed wherein the moiety corresponding to Het in the present claims is of the structure:



which is disclosed in the present application as part of compound 33.

Examples A, C, and D of the present application all show good (at least 50%) to total protection being observed for *Alternaria Brassicae, Botrytis cinerea,* and *Pyrenophora teres*, respectively with compounds comprising this moiety.

Accordingly, it is requested that the rejection of claims 1-14, 16, 18, and 19 under 35 U.S.C. 103(a) as being unpatentable over Mansfield et al. in view of Cooke et al. be withdrawn.

Claim 19 has been rejected under 35 U.S.C. 112, first paragraph, because, according to the Examiner, the specification, while being enabling for controlling fungi on crops, does not reasonably provide enablement for the prevention of fungi.

Claim 19 has been amended by deletion of the phrase "preventively or curatively".

Accordingly, it is requested that the rejection of claim 19 under 35 U.S.C. 112, first paragraph, be withdrawn.

Claim 1 has been rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement because, according to the Examiner, "The expressions 'thiophene ... substituted in the ortho position', 'metallic complexes' and 'metalloidic complexes' are employed with considerable abandon in claim 1 with no indication given as to what substituents really are."

Claim 1 has now been amended so that the expressions "thiophene ... substituted in the ortho position","metallic complexes" and "metalloidic complexes" no longer appear therein.

Accordingly, it is requested that the rejection of claim 1 under 35 U.S.C. 112, first paragraph, be withdrawn.

Claims 1 and 16 have been rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter that Applicants regard as the invention.

Specifically, according to the Examiner, the expressions "thiophene ... substituted in the ortho position","metallic complexes" and "metalloidic complexes" in claim 1 are indefinite; and the term "general" in claims 1 and 16 is indefinite because it suggests that the compounds have other structures not contemplated by Applicants.

Claims 1 and 16 have been amended to delete all occurrences of "thiophene ... substituted in the ortho position","metallic complexes", "metalloidic complexes", and "general".

Accordingly, it is requested that the rejection of claims 1 and 16 under 35 U.S.C. 112, second paragraph, be withdrawn.

Claims 1-14, 16, 18, and 19 have been provisionally rejected on the ground of non-statutory obviousness-type double patenting as being unpatentable over claims 1-10, 14, 15, 41, and 41-52 of co-pending Application No. 10/545,364 in view of Cooke et al.

As pointed out in the Office Action, a timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application.

The present application and U.S. Patent Application No. 10/545,364 are commonly owned by Bayer Cropscience S.A.

A Terminal Disclaimer Under 37 CFR 1.321(b) and (c) disclaiming, with the customary exceptions, the terminal part of the statutory term of any patent granted on the instant application that would extend beyond the expiration date(s) of the full statutory term(s) of any patent(s) issued on U.S. Patent Application No. 10/545,364 is filed herewith.

Accordingly, it is requested that the provisional rejection of claims 1-14, 16, 18, and 19 on the ground of non-statutory obviousness-type double patenting as being unpatentable over claims 1-10, 14, 15, 41, and 41-52 of co-pending Application No. 10/545,364 in view of Cooke et al. be withdrawn.

Claims 1-14 and 19 have been objected to because the term oxides is misspelled in claim 1, last line, and the term characterized is misspelled in claims 1-14 and 19. The claims have now been amended to overcome these objections.

In view of the foregoing, it is submitted that this application is in condition for allowance. Favorable consideration is requested.

Respectfully submitted,

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